

E-FILED - 7/23/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHNNY L. SMALL,
Petitioner,

vs.

M.S. EVANS,
Respondent.

No. C 07-5133 RMW (PR)

ORDER DENYING MOTIONS
FOR APPOINTMENT OF
COUNSEL

(Docket Nos. 12 & 14)

Petitioner, a state prisoner proceeding pro se, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 and paid the filing fee. Respondent has filed an answer to the order to show cause why the habeas corpus petition should not be granted.

Petitioner has filed two motions for appointment of counsel. The Sixth Amendment's right to counsel does not apply in habeas corpus actions. Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986). While 18 U.S.C. § 3006A(a)(2)(B) authorizes a district court to appoint counsel to represent a habeas petitioner if "the court determines that the interests of justice so require," the courts have made appointment of counsel the exception rather than the rule. Appointment is mandatory only when the circumstances of a particular case indicate that appointed counsel is necessary to prevent due process violations. See Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986).

1 Petitioner has thus far been able to adequately present his claims for relief. Respondent
2 has produced the state record, which include petitioner's state appellate briefs prepared by
3 counsel. No evidentiary hearing appears necessary in this case, nor are any other
4 extraordinary circumstances apparent. Accordingly, the court concludes that appointment
5 of counsel is not necessary at this time. Petitioner's motions for appointment of counsel
6 (docket nos. 12 & 14) are DENIED without prejudice.

7 IT IS SO ORDERED.

8 Dated: 7/22/08


9 RONALD M. WHYTE
United States District Judge